

1 ROBBINS UMEDA LLP
2 MARC M. UMEDA (197847)
3 mumeda@robbinsumeda.com
4 KEVIN A. SEELY (199982)
5 kseely@robbinsumeda.com
6 DANIEL R. FORDE (248461)
7 dforde@robbinsumeda.com
8 600 B Street, Suite 1900
9 San Diego, CA 92101
10 Telephone: (619) 525-3990
11 Facsimile: (619) 525-3991

7 | Co-Lead Counsel for Plaintiffs

8 [Additional counsel appear on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

11 IN RE ACCURAY, INC. SHAREHOLDER) Lead Case No. C 09 05580 CW
12 DERIVATIVE LITIGATION)
13 This Document Relates To:) STIPULATION AND ORDER REGARDING
14 ALL ACTIONS) FILING OF CONSOLIDATED COMPLAINT
) AND BRIEFING SCHEDULE AS
) **MODIFIED**
15)
16)

17

18

19

20

21

22

23

24

25

26

27

28

STIPULATION AND [PROPOSED] ORDER REGARDING FILING OF
CONSOLIDATED COMPLAINT AND BRIEFING SCHEDULE
LEAD CASE NO. C 09 05580 CW

1 WHEREAS, on February 5, 2010, defendants filed a motion to stay and to dismiss this
2 consolidated federal derivative action (the "Action"), wherein they sought a limited stay of this
3 Action and raised arguments regarding continuous ownership, demand futility, and failure to state a
4 claim with regard to each count in the Consolidated Verified Shareholder Derivative Complaint (the
5 "Complaint");

6 WHEREAS, on March 8, 2010, the defendants filed notice that they have withdrawn their
7 request for a limited stay of this Action because the earlier filed state court action, *Israni v.*
8 *Thomson, et al.*, Case No. 1-09-CV-149157 (Santa Clara County Superior Court), has been
9 voluntarily dismissed;

10 WHEREAS, the hearing on the defendants' pending motion to dismiss the Complaint is
11 scheduled to be heard on April 29, 2010;

12 WHEREAS, on March 16, 2010, the plaintiff in the above-referenced state court action,
13 Sanjay Israni, filed a shareholder derivative complaint ("Israni Complaint") in this District Court,
14 captioned *Israni v. Thomson, et al.*, No. C 10-01117 WHA. The Israni Complaint contains
15 allegations arising out of the same or substantially the same transactions or events as this Action;

16 WHEREAS, it is anticipated by the parties that the Israni Complaint will be consolidated
17 with this Action pursuant to paragraphs 14 and 15 of the December 23, 2009 Stipulation
18 Consolidating Actions, Appointing Co-Lead Counsel, and Related Matters and Order Thereon;

19 WHEREAS, the Israni Complaint is substantively different from the operative Complaint in
20 this Action in the following ways, among others: (i) plaintiff Israni's pleading regarding continuous
21 ownership of Accuray, Inc. ("Accuray") stock is different; and (ii) plaintiff Israni asserts additional
22 causes of action related to insider selling, which allegations are not in the operative Complaint for
23 this Action;

24 WHEREAS, the parties agree that the Israni Complaint and consolidation into this Action
25 will affect defendants' pending motion to dismiss; and

26

27

28

1 WHEREAS, the parties agree that in order to conserve resources and minimize duplication,
2 the parties need time to address the issues raised by the anticipated filing and consolidation of the
3 Israni Complaint;

4 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by plaintiffs and
5 defendants, through their respective counsel of record, as follows:

6 1. Plaintiffs shall file an amended consolidated complaint within 20 days of entry of the
7 order on this stipulation;

8 2. If defendants respond by motion, they shall file a single consolidated motion within
9 30 days of the filing of an amended consolidated complaint;

10 3. Plaintiffs shall file a single consolidated opposition within 30 days of the filing of the
11 motion;

12 4. Defendants shall file a single consolidated reply within 20 days of the filing of the
13 opposition;

14 5. The April 29, 2010 hearing on the motion to dismiss shall be taken off calendar and
15 continued to a date convenient for the Court, consistent with the above proposed briefing schedule;
16 and

17 6. Should any defendant challenge plaintiffs' standing to maintain this derivative action
18 on the grounds that plaintiffs failed to satisfy the requirements of Federal Rule of Civil Procedure
19 23.1 and/or Delaware Chancery Court Rule 23.1, by failing to plead facts sufficient to raise a
20 reasonable doubt that a pre-litigation demand on Accuray's Board would have been futile, the Court
21 will determine this issue as it relates to the amended consolidated complaint based on the
22 membership of the Board on the date the Israni Complaint was filed (March 16, 2010).

25 DATED: March 17, 2010

ROBBINS UMEDA LLP
MARC M UMEDA
KEVIN A. SEELY
DANIEL R. FORDE

s/Kevin A. Seely
KEVIN A. SEELY

600 B Street, Suite 1900

1 San Diego, CA 92101
2 Telephone: (619) 525-3990
3 Facsimile: (619) 525-3991

4 JOHNSTON BOTTINI, LLP
5 FRANK J. JOHNSON
6 FRANCIS A. BOTTINI, JR.
7 DEREK J. WILSON
8 501 West Broadway, Suite 1720
9 San Diego, CA 92101
10 Telephone: (619) 230-0063
11 Facsimile: (619) 238-0622

12 KENDALL LAW GROUP, LLP
13 HAMILTON P. LINDLEY
14 3232 McKinney, Ste. 700
15 Dallas, TX 75204
16 Telephone: (214) 744-3000
17 Facsimile: (214) 744-3015

18 DATED: March 17, 2010

19 Co-Lead Counsel for Plaintiffs
20 WILSON SONSINI GOODRICH
21 & ROSATI, P.C.
22 BORIS FELDMAN
23 IGNACIO E. SALCEDA

24 s/Ignacio E. Salceda
25 IGNACIO E. SALCEDA

26 650 Page Mill Road
27 Palo Alto, CA 94304
28 Telephone: (650) 493-9300
Facsimile: (650) 493-6811

29 Counsel for Nominal Defendant Accuray, Inc.
30 and individual defendants Euan S. Thomson,
31 Wayne Wu, Li Yu, Robert S. Weiss, Elizabeth
32 Davila, John P. Wareham, Robert E.
33 McNamara, and John R. Adler, Jr.

34 I, Kevin A. Seely, am the ECF User whose ID and password are being used to file this
35 Stipulation and [Proposed] Order Regarding Filing of Consolidated Complaint and Briefing
36 Schedule. In compliance with General Order No. 45, X.B., I hereby attest that Ignacio E. Salceda
37 has concurred in this filing.

38 s/ Kevin A. Seely
39 KEVIN A. SEELY

